

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

DOCKET NO. UE-991606
DOCKET NO. UG-991607

Exhibit No 271 (DMF-3)
Witness: Don M. Falkner, Avista Corp.

WUTC

DOCKET NO. UE-991606

EXHIBIT # 271

ADMIT

W/D

REJECT

SERVICE DATE
MAY 13 1980

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)	
)	
Complainant,	)	CAUSE NO. U-79-43
)	
vs.	)	ORDER REJECTING
	)	TARIFF REVISIONS AND
PACIFIC POWER & LIGHT COMPANY,	)	AUTHORIZING REFILING
)	
Respondent.)	
.....)	
)	
In the Matter of the Petition of WASHINGTON NATURAL GAS COMPANY for approval of tariff sheet	)	CAUSE NO. U-79-49
.....	)	ORDER DENYING PETITION
)	
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)	
)	
Complainant,	)	CAUSE NO. U-79-50
)	
vs.	)	ORDER REJECTING
	)	TARIFF REVISION AND
WASHINGTON NATURAL GAS COMPANY,	)	AUTHORIZING REFILING
)	
Respondent.)	
.....)	

The above-entitled consolidated proceeding was heard at Olympia, Washington, on October 17, 1979, before Chairman Robert C. Bailey, Commissioner Frank W. Foley, Commissioner A. J. Benedetti, and Administrative Law Judge William Metcalf.

The parties were represented as follows:

PETITIONER and
RESPONDENT: WASHINGTON NATURAL GAS COMPANY
By J. Jeffrey Dudley
and Frank Birkholz
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Seattle, Washington 98101

RESPONDENT: PACIFIC POWER & LIGHT COMPANY
By Leonard A. Girard
Attorney at Law
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Portland, OR 97204

INTERVENORS: THE WASHINGTON WATER POWER COMPANY
By David J. Meyer
Attorney at Law
1400 Washington Trust Financial Center
Spokane, Washington 99204

MAY 15 1980

PUGET SOUND POWER & LIGHT COMPANY
By William S. Weaver
Attorney at Law
1900 Washington Building
Seattle, Washington 98101

CASCADE NATURAL GAS CORPORATION
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CITY OF SELAH
By Douglas D. Peters
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ASSOCIATION OF WASHINGTON CITIES
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COMMISSION: WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION
By John W. Hough
Assistant Attorney General
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PRELIMINARY MEMORANDUM

This consolidated proceeding involves utility tariff schedules filed by public service companies that are designed to charge directly to ratepayers their proportionate shares of franchise fees imposed on those public service companies by municipal governments where those ratepayers reside. Various courses of action are urged by the parties; however, the Commission is satisfied that its decision herein is confined to fixing "the proper proportion of the payment [of a franchise fee] to be allocated to operating expense," State ex rel. Pacific Telephone & Telegraph Co., v. Department of Public Service et al., 19 Wn.2d 200, 142 P.2d 498 (1943). Summary of the evidence of record therefore need not go beyond the area of this pivotal issue.

A small number of cities and towns in the State of Washington impose franchise fees based on a percentage of the gross revenues derived from sales by respondents within their municipal boundaries; that is, franchise fees are computed by multiplying a percentage franchise fee by a utility's revenues from providing service in a municipality. Franchise fees are imposed on respondents' operations in addition to other municipal taxes such as business and occupation taxes. Local municipal taxes are charged directly to the ratepayers of the municipality involved. Franchise fees are treated by respondents as general operating expenses. Like all general operating expenses, they are borne by all ratepayers of the respective companies in the state and not solely by the ratepayers residing in the municipalities which impose the franchise fees. It is therefore important

that franchise fees be separate and distinct from local municipal taxes, recognizing only reasonable benefits accruing to the total system, thus becoming a legitimate obligation of all ratepayers.

As described in detail in the following findings, respondents seek approval of tariffs that are designed to collect municipal franchise fees directly from customers residing in the municipality imposing them, fully in the case of Washington Natural Gas, and in the case of Pacific Power & Light to the extent the fees exceed 3.5 percent.

The filings herein were made to counter the basic unfairness of excessive franchise fees, both as to percentage and as to actual amounts. For example, between 1945 and 1978 Yakima, Selah, Moxee City and Walla Walla realized increases of over 1,000 percent in the annual amounts paid to them by Pacific Power & Light Company as franchise fees; between 1939 and 1978, the percentage increase in fee payments to Grandview is 2,936 percent. Although percentage-based franchise fees paid by Pacific Power & Light Company have historically averaged approximately 2.5 percent, Selah enacted an ordinance increasing the company's franchise fee to 5 percent in 1978.

In the case of Washington Natural Gas Company, its total franchise fees are doubling every four years. Its 1978 franchise payment to the City of Tacoma represented an increase of 3,422 percent over the 1956 payment. In 1980 the increase in cost of natural gas over the 1979 cost will give Tacoma additional franchise fee revenue of \$152,300.

The Commission is satisfied that it is inconsistent with the mandate of RCW 80.28.090 to allow franchise fee payments over a reasonable level to be allowed as a system-wide operating expense. As the evidence of Washington Natural Gas Company shows, under present tariffs all of its customers must contribute to municipal revenues that benefit only 10 percent of its customers.

An identifiable measure of a usual and customary and presumptively reasonable franchise fee is the level that municipalities have historically imposed. The evidence of record indicates that the percentage franchise fees imposed by municipalities in this state range from 1 percent to 3 percent, except for the Selah increase, an average of approximately 2.5 percent. Allowing a maximum expense of 3 percent of gross revenues as a municipal franchise fee to be included in general operating expenses that are used to establish system-wide revenue need is consistent with historical franchise fee levels and the prohibition of RCW 80.28.090 against undue and unreasonable prejudices and advantages. Accordingly, the petition of Washington Natural Gas Company seeking to collect all municipal franchise fees directly from customers residing in the municipality imposing them must be denied, and the associated tariff filing must be rejected, with leave to file tariff provisions consistent with the decision herein. Similarly, the filing of Pacific Power & Light Company which would pass on franchise fees in excess of 3.5 percent directly to ratepayers receiving service in the area collecting such fees must be rejected with leave to file tariff revisions consistent with the decision herein.

FINDINGS OF FACT

1. The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities and transfers of public service companies, including gas companies and electrical companies.

2. Pacific Power & Light Company, respondent herein, is engaged in the business of furnishing electric service within the State of Washington as a public service company.

3. Washington Natural Gas Company, respondent herein, is engaged in the business of furnishing gas service within the State of Washington as a public service company.

4. A small number of cities and towns in the State of Washington impose franchise fees based on respondents' revenues from sales within their respective jurisdictions. Franchise fees are imposed on respondents' operations in addition to other municipal taxes such as business and occupation taxes, and they are treated by the respondents as general operating expenses. Like all general operating expenses, they are borne by all ratepayers in the state and not solely by the ratepayers residing in the municipalities which impose the franchise fees.

5. Pacific Power & Light Company filed on July 23, 1979, revisions to its Tariff WN U-72 (Fourteenth Revision of Sheet No. B, First Revision of Sheet No. I.1, Thirty-fourth Revision of Sheet No. 101, and Original Sheet No. 102). The Commission suspended this filing pending hearing; the suspension and investigation are docketed as Cause No. U-79-43. The filing is designed to pass on franchise fees in excess of 3.5 percent directly to ratepayers receiving services in the area collecting such franchise fees.

6. Washington Natural Gas Company filed on July 31, 1979, a petition for approval of the tariff revision docketed by the Commission as Cause No. U-79-50. The petition seeks authorization to collect all municipal franchise fees directly from customers residing in the municipality imposing them. The petition was docketed as Cause No. U-79-49.

7. Washington Natural Gas Company filed on July 31, 1979, a revision to its Tariff WN U-2 (Original Sheet No. 102) to establish a franchise fee adjustment schedule. The revision is designed to pass on the effect of any franchise fees directly to ratepayers receiving service or renting equipment from the company in the area collecting such franchise fees as a percentage of gross revenue. The Commission suspended operation of the tariff revision pending hearing concerning the justness and reasonableness of the revision. The suspension and investigation is docketed as Cause No. U-79-50.

8. If the filings under suspension herein are approved, respondents would itemize municipal franchise fees specifically on the bills of affected customers.

9. By order dated August 28, 1979, the Commission consolidated Cause Nos. U-79-43, -49, and -50 for hearing and determination. Hearing was held on October 17, 1979, as related above.

10. Intervention in this consolidated proceeding was sought by The Washington Water Power Company, Puget Sound Power & Light Company, and Cascade Natural Gas Corporation. The respective motions to intervene were granted at hearing.

11. The filings herein were protested by the City of Selah and the Association of Washington Cities prior to hearing and representatives of the city and the Association participated in the hearing.

12. The files of this consolidated proceeding contain the following pleadings: Brief filed by the City of Selah (October 15, 1979); of Association of Washington Cities (October 17, 1979); Memorandum on Behalf of Commission Staff (October 30, 1979); Opening Brief of Pacific Power & Light Company (November 26, 1979); Opening Brief of Washington Natural Gas Company (November 26, 1979); Answering Brief of Association of Washington Cities (December 6, 1979); Supplemental Brief of Washington Natural Gas Company (December 12, 1979); Reply Brief of Cascade Natural Gas Corporation (December 20, 1979); Reply Brief of Puget Sound Power & Light Company (December 20, 1979); Reply Brief of Washington Natural Gas Company (December 20, 1979); Motion to Strike Washington Natural Gas Company's Supplemental Brief or in the Alternative to Impose Sanctions (December 20, 1979); and Reply of Washington Natural Gas Company to Motion to Strike Washington Natural Gas Company's Supplemental Brief or in the Alternative to Impose Sanctions (December 26, 1979). The foregoing pleadings, each valuable and scholarly, have been carefully considered in reaching the decision herein.

13. It is the position of Washington Natural Gas Company that gas companies are not required to obtain a franchise contract as a condition of doing business within the municipal corporate limits of any county, city or town; that a tariff which results in all of its customers contributing to the annual franchise fees imposed by municipal corporations constitutes an undue and unreasonable preference and advantage as to the customers residing in such municipal corporations; and that a tariff which passes on directly to residents of municipalities the assessments of their governing bodies, whether they be termed taxes or fees, is required under the provisions of Title 80 RCW.

14. It is the position of Pacific Power & Light Company that counties, cities, and towns cannot impose an unreasonable franchise fee as a condition of doing business within their corporate boundaries and that anything over 3.5 percent of a public utility's annual gross revenues is an unreasonable franchise fee for any given county, city, or town.

15. Puget Sound Power & Light Company joins in the position taken by Pacific Power & Light Company.

16. Cascade Natural Gas Corporation joins in the position taken by Washington Natural Gas Company.

17. The Association of Washington Cities and the City of Selah contend that this Commission has no legal authority to allow a utility to pass on any assessment termed a franchise fee, or any portion of one, directly to ratepayers in the municipality imposing the fee.

18. Franchise fees which municipalities in the State of Washington have historically imposed on revenues derived from sales made by public utility companies within their corporate limits average approximately 2.5 percent. Expenses attributable to any such franchise fees not exceeding 3 percent are reasonable expenses to include in general operating expenses; expenses attributable to franchise fees exceeding 3 percent of revenues from respective municipal sales should be passed on directly to customers in the municipalities collecting such fees.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction of the subject matter and of the parties to this proceeding.

2. It would be unjustly discriminatory and unreasonably prejudicial, in contravention of prohibitions contained in RCW 80.28.090, to allow expenses attributable to municipal franchise fees exceeding 3 percent to be included in the general operating expenses of respondents.

3. The tariff filings under suspension herein should be rejected with leave to submit new filings which authorize respondents to impose directly on ratepayers their prorata share of municipal franchise fees assessed in excess of 3 percent by municipalities in which such ratepayers reside.

O R D E R

IT IS THEREFORE ORDERED That the petition of Washington Natural Gas Company, respondent, docketed as Cause No. U-79-49 be, and it is hereby, denied; and that Original Sheet No. 102 filed by respondent and under suspension in Cause No. U-79-50 be, and it is hereby, rejected.

IT IS FURTHER ORDERED That the tariff revisions filed by Pacific Power & Light Company, respondent, under suspension in Cause No. U-79-43 be, and they are hereby, rejected.

IT IS FURTHER ORDERED That respondents be, and they are hereby, authorized to file revisions to their respective tariffs which are designed to collect all municipal franchise fees that exceed 3 percent directly from those customers residing in municipalities imposing such fees.


IT IS FURTHER ORDERED That all motions made in the course of the hearing and those made subsequent to the close of the hearing which are consistent with the findings and decision herein be, and they are hereby granted; those inconsistent with the findings and decision herein are denied.


IT IS FURTHER ORDERED That jurisdiction of this consolidated proceeding be retained to effectuate the provisions of this order.

DATED at Olympia, Washington, and effective this 13th day of May, 1980.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


ROBERT C. BAILEY, Chairman


FRANK W. FOLEY, Commissioner


A. J. BENEDETTI, Commissioner